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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/097,023	06/12/1998	JILL MCFADDEN	290252021800	2472

7590 08/30/2002

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[REDACTED] EXAMINER

THOMPSON, MICHAEL M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3763

DATE MAILED: 08/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/097,023	MCFADDEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Michael M. Thompson	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 June 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15, 17-22, 24-42, 44-48 and 50-60 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15, 17-22, 24-42, 44-48 and 50-60 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 10 is objected to because of the following informalities: The word "knit" is misspelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 8, 9, 31, 36, 37, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook. (4,637,396).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-9, 13-15, 17-22, 24-27, 31-37, 40-43, 44-48 and 50-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samson (5,702,373) in view of Cook (4,637,396).

Samson discloses a catheter comprising an elongated tubular member having a proximal end, distal end, and a passageway defining a lumen extending between the proximal and distal ends, said elongate tubular member comprising a braid and an inner tubular liner in coaxial relationship with the braided tubular member. Samson further discloses an outer cover; a braided tubular member formed from metal wire; a relatively stiff proximal segment and relatively flexible distal segment; a braided tubular member comprised of a metal alloy/stainless steel having a generally circular cross-sectional shape; wherein at least one of the inner tubular liner and the outer tubular cover are radiopaque; a braided tubular member that is generally not radially expandable; an inner proximal liner and an outer proximal cover; a braid interposed between the inner proximal liner and the outer proximal cover; a braided tubular member extending into the proximal segment. More specifically, Samson discloses a braided tubular member comprising of super elastic alloy (col. 7, line 64), nickel-titanium alloy (col. 8, lines 10-12), nitinol (col. 8, lines 10-12), platinum alloy (col. 12, lines 10-12); wherein the wire has a diameter of about 0.3 mil- 1.5 mil (col. 11, lines 60-62); comprising a first strand made from a first material and a second made from a second material; an outer tubular cover comprised of polyethylene (col. 10, line 36), polyvinyl chloride (col. 10, line 49); and an inner tubular liner comprised of polyethylene (col. 10, line 27), PVC (col. 10, line 27), EVA (col. 10, line 28), PET (col. 10, line 28); and a coil (282) interposed between the inner proximal liner and the outer

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proximal cover. Samson teaches all of the limitations of the claims with the exception of a knit tubular member. Cook teaches a catheter with a knitted reinforcement member. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to simply modify the braided reinforcement layer of Samson with the knitted reinforcement member taught by Cook for the well known purpose of reinforcement of a device for the well known purpose of adding rigidity along certain portions of a catheter body and/or help prevent undesirable characteristics during usage such as kinking of the catheter tube in a medical procedure. Please note that it is also the Examiner's position that both braided and knitted reinforcement structures are recognized in the art as equivalents for their use in the catheter art and the selection of any of these known equivalents to reinforce a catheter would be within the level of ordinary skill in the art.

7. Claims 10-12, 28-30, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samson ('373) in view of Cook ('396) as applied to claims 1-9, 13-27, 31-37, and 40-60 above, and further in view of Samson et al., U.S. Patent 5,549,109. Samson ('373) in view of Cook teaches all of the elements of Applicant's claims with the exception of a knit tubular member comprised of a multi-filament wire. Samson et al. ('109) discloses multi-filament tubes (302) that are woven (col. 9, lines 65-67). It would have been obvious to one having ordinary skill in the art to modify the modified catheter of Samson ('373) and Cook to use a multi-filament wire as taught by Samson ('109) to improve kinking resistance. Samson discloses the use of stainless steel, platinum, and nitinol as the material for the multi-filament wire to improve or simply change kinking resistance and further to provide different flexibility characteristics.

***Response to Amendment***

8. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

**Contacts**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, AnhTuan Nguyen, can be reached on (703) 308-2154. The official fax phone number for submissions to the organization where this application or proceeding is assigned is (703) 872-9302. The official fax phone number for submission of After Final response is (703) 872-9303.

Michael M. Thompson

Patent Examiner

MT   
August 23, 2002

  
ANHTUANT.NGUYEN  
PRIMARY EXAMINER

8/23/02